

DEPARTMENT OF STATE REVENUE

04-20130643.LOF

Letter of Findings Number: 04-20130643
Sales and Use Tax
For Tax Years 2010, 2011, and 2012

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.

ISSUES

I. Sales Tax – Liability.

Authority: IC § 6-2.5-1-2; IC § 6-2.5-1-27; IC § 6-2.5-2-1; IC § 6-2.5-4-1; IC § 6-2.5-5-1 et seq.; IC § 6-2.5-5-20; IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indianapolis Fruit Co. v. Indiana Dept. of State Revenue, 691 N.E.2d 1379 (Ind. Tax Ct. 1998); Indiana Dept. of State Revenue v. Kimball International, Inc., 520 N.E.2d 454 (Ind. Ct. App. 1988); [45 IAC 2.2-2-1](#); [45 IAC 2.2-4-1](#).

Taxpayer protests the imposition of sales tax.

II. Use Tax – Liability.

Authority: IC § 6-2.5-1-2; IC § 6-2.5-1-27; IC § 6-2.5-2-1; IC § 6-2.5-3-1; IC § 6-2.5-3-2; IC § 6-2.5-3-4; IC § 6-2.5-3-6(b); IC § 6-2.5-4-1; IC § 6-2.5-5-1 et seq.; IC § 6-8.1-5-1(c); IC § 6-2.5-5-3; Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Rhoads v. Indiana Dept. of State Revenue, 774 N.E.2d 1044 (Ind. Tax Ct. 2002); Ind. Dept. of State Revenue v. AOL, 963 N.E.2d 498 (Ind. 2012); USAir, Inc. v. Indiana Dept. of State Revenue, 623 N.E.2d 466 (Ind. Tax Ct. 1993); Indianapolis Fruit Co. v. Indiana Dept. of State Revenue, 691 N.E.2d 1379 (Ind. Tax Ct. 1998); Indiana Dept. of State Revenue v. Kimball International, Inc., 520 N.E.2d 454 (Ind. Ct. App. 1988); Graham Creek Farms v. Ind. Dept. State Revenue, 819 N.E.2d 151 (Ind. Tax Ct. 2004); Ind. Dept. of State Revenue v. RCA Corp., 310 N.E.2d 96 (Ind. Ct. App. 1974); [45 IAC 2.2-2-1](#); [45 IAC 2.2-3-4](#); [45 IAC 2.2-5-8](#).

Taxpayer protests the imposition of use tax.

STATEMENT OF FACTS

Taxpayer is an Indiana farm market retailer. The Indiana Department of Revenue ("Department") conducted an audit of the tax years 2010, 2011, and 2012. As a result of that audit, the Department issued proposed assessments of base tax and interest. Taxpayer protests the imposition of the sales and use tax imposed on specific purchases. An administrative hearing was held, and this Letter of Findings results. Additional facts will be supplied as necessary.

I. Sales Tax – Liability.

DISCUSSION

Taxpayer protests the imposition of sales tax on the sale of pumpkins. All tax assessments are prima facie evidence that the Department's claim for the tax is valid, and the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). The issue before the Department is whether Taxpayer met its burden to prove the Department's assessment is incorrect.

Indiana imposes a sales tax on retail transactions made in Indiana. IC § 6-2.5-2-1(a); [45 IAC 2.2-2-1](#). The person who acquires property in a retail transaction is responsible for payment of sales tax on the transaction. IC § 6-2.5-2-1(b).

Retail transactions ordinarily subject to sales tax will be exempt to the extent they fit the criteria of an enumerated statutory exemption. IC § 6-2.5-5-1 et seq. Exemption statutes are strictly construed in favor of taxation. Indianapolis Fruit Co. v. Indiana Dept. of State Revenue, 691 N.E.2d 1379, 1383 (Ind. Tax Ct. 1998). Whether a taxpayer qualifies for an exemption from tax is "highly fact sensitive," and it is the taxpayer's burden to prove the exemption criteria has been met. Indiana Dept. of State Revenue v. Kimball International, Inc., 520 N.E.2d 454, 456 (Ind. Ct. App. 1988).

The Department's audit found that Taxpayer sold "decorative pumpkins" without collecting sales tax. Taxpayer claims that its sales of pumpkins are exempt because pumpkins are food and the sale of food is exempt from sales tax. Taxpayer states "[t]he pumpkins are sold in exactly the same state as they are just before they are picked from the vine in the pumpkin field."

The sale of pumpkins is a retail transaction subject to Indiana sales tax. See IC § 6-2.5-1-2; IC § 6-2.5-4-1; IC § 6-2.5-1-27; [45 IAC 2.2-4-1](#). The issue here is whether Taxpayer's sale of pumpkins is exempt from sales tax.

The general rule is that "[s]ales of food and food ingredients for human consumption are exempt from the state gross retail tax." IC § 6-2.5-5-20(a). Taxpayer has demonstrated that the pumpkins it sells are food for human consumption and has met its burden to show that the Department's proposed assessment is incorrect. Taxpayer's sale of pumpkins is exempt from sales tax, and Taxpayer's protest is sustained regarding the sale of pumpkins.

FINDING

Taxpayer's protest is sustained regarding the imposition of sales tax on Taxpayer's sale of pumpkins.

II. Use Tax – Liability.

DISCUSSION

Taxpayer protests the imposition of use tax on the purchase of drying crates and office furniture. Again, all tax assessments are prima facie evidence that the Department's claim for the tax is valid, and the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Rent-A-Center East, Inc., 963 N.E.2d at 466; Lafayette Square Amoco, Inc., 867 N.E.2d at 292. The issue before the Department is whether Taxpayer met its burden to prove the Department's assessment is incorrect.

As stated, Indiana imposes a sales tax on retail transactions made in Indiana. IC § 6-2.5-2-1(a); [45 IAC 2.2-2-1](#). Indiana imposes a complementary use tax on "the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction" regardless of the merchant's or transaction's location. IC § 6-2.5-3-2(a); [45 IAC 2.2-3-4](#). The use tax is "functionally equivalent to [the] sales tax." Rhoades v. Indiana Dept. of State Revenue, 774 N.E.2d 1044, 1047-48 (Ind. Tax Ct. 2002). "Indeed, the purpose of the use tax is merely to prevent evasion of the sales tax." Ind. Dept. of State Revenue v. AOL, 963 N.E.2d 498, 501 (Ind. 2012).

The use tax applies to retail transactions. A retail transaction is a transaction made by a retail merchant that constitutes "selling at retail." IC § 6-2.5-1-2. Selling at retail means a retail merchant "(1) acquires tangible personal property for the purpose of resale; and (2) transfers that property to another person for consideration" in the ordinary course of the merchant's business. IC § 6-2.5-4-1. Tangible personal property is personal property that "can be seen, weighed, measured, felt, or touched" IC § 6-2.5-1-27.

Additionally, for a retail transaction to be subject to use tax, the tangible personal property must be "used, stored, or otherwise consumed" in Indiana. [45 IAC 2.2-3-4](#). For the purposes of Indiana use tax, "[u]se" means the exercise of any right or power of ownership over tangible personal property." IC § 6-2.5-3-1(a). The Indiana Tax Court has recognized that "[t]his is a broad definition" and that "[a]lmost any act not otherwise exempt will constitute a taxable use." USAir, Inc. v. Indiana Dept. of State Revenue, 623 N.E.2d 466, 469 (Ind. Tax Ct. 1993).

The person who uses, stores, or consumes property acquired in a retail transaction is responsible for payment of use tax on the transaction. IC § 6-2.5-3-6(b).

Retail transactions ordinarily subject to use tax will be exempt if sales tax was paid at the point of purchase. IC § 6-2.5-3-4; [45 IAC 2.2-3-4](#). Retail transactions will also be exempt to the extent they fit the criteria of an enumerated statutory exemption from sales or use tax. IC § 6-2.5-5-1 et seq. Exemption statutes are strictly construed in favor of taxation. Indianapolis Fruit, 691 N.E.2d at 1383. Whether a taxpayer qualifies for an exemption from tax is "highly fact sensitive," and it is the taxpayer's burden to prove the exemption criteria has

been met. Kimball, 520 N.E.2d at 456.

1. Drying Crates

Taxpayer purchased crates to dry ear corn used for animal feed ("drying crates"). The Department's audit determined that these were taxable purchases because Taxpayer failed to demonstrate that the drying crates were purchased in a casual sale and that their purchase qualified for an exemption. Taxpayer did not provide documentation to adequately support this assertion at the hearing.

Taxpayer argues that the drying crates "are exempt from Indiana use tax under the Code because they are an essential and integral part of [Taxpayer's] production process." The audit report disagreed stating that the "crates are merely being used as a holding container where ambient air can flow through them to dry the corn," and found that "[t]he crates are subject to tax." The issue is whether Taxpayer's purchase of the drying crates is exempt from use tax.

Taxpayer references the equipment exemption in IC § 6-2.5-5-3. To claim the exemption, a taxpayer must first demonstrate that it produces tangible personal property, as it is clear that "without production there can be no exemption." Indianapolis Fruit, 691 N.E.2d at 1384. It is undisputed that Taxpayer produces ear corn for animal consumption.

After establishing that it is engaged in production, a taxpayer must show that the property at issue was acquired for the "direct use in the direct production [or] manufacture . . . of other tangible personal property." IC § 6-2.5-5-3(b). Courts have recognized that the legislature's "repetition of the requirement that the use be direct" was intended to provide for a narrow construction of the exemption. Ind. Dept. of State Revenue v. RCA Corp., 310 N.E.2d 96, 100 (Ind. Ct. App. 1974). Therefore, to be considered directly used in direct production or manufacture, the property must be "an essential and integral part of an integrated process that produces tangible personal property." Kimball, 520 N.E.2d at 457; [45 IAC 2.5-5-8\(c\)](#); See Graham Creek Farms v. Ind. Dept. State Revenue, 819 N.E.2d 151, 156 (Ind. Tax Ct. 2004). Whether property is essential and integral to an integrated process is determined "by identifying the points where production begins and where it ends." Indianapolis Fruit, 691 N.E.2d at 1384. The production process "begins at the point of the first operation or activity constituting part of the integrated production process and ends at the point that the production has altered the item to its completed form, including packaging, if required." [45 IAC 2.2-5-8\(d\)](#).

The drying crates are "open on all sides to allow air flow, supplied by drying fans, to go through the crate and dry the corn." Taxpayer provided photographs depicting the drying crates and fans used to dry the ear corn. If not dried thoroughly before it is packaged, the ear corn "will rot in the package and be completely wasted." The drying crates are essential and integral to Taxpayer's production of ear corn for animal consumption. Because the drying crates are an essential and integral part of Taxpayer's production process, they are used directly in the direct production of tangible personal property and are exempt. Taxpayer's protest is sustained.

2. Office Furniture

Taxpayer purchased office furniture. At the time of the audit, Taxpayer argued but failed to demonstrate that sales tax had been paid at the time of purchase of the office furniture. Consequently, the audit report found that because sales tax had not been paid, the purchase of the office furniture was subject to use tax.

Retail transactions ordinarily subject to use tax will be exempt if sales tax was paid at the point of purchase. IC § 6-2.5-3-4; [45 IAC 2.2-3-4](#). At the administrative hearing, Taxpayer provided a copy of an invoice showing the purchase of the office furniture. On this invoice, Taxpayer has demonstrated that it paid the sales tax at the time it purchased the office furniture. Therefore, Taxpayer has met its burden to show that the Department's proposed assessment is incorrect. Taxpayer's protest is sustained.

FINDING

Taxpayer's protest is sustained regarding the imposition of use tax on the purchase of drying crates and office furniture.

SUMMARY

Taxpayer's protest is sustained on Issue I regarding sales tax. Taxpayer's protest is sustained on Issue II regarding use tax.

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